

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:
Consumer Advocate and Protection Division
Attorney General's Office
P.O. Box 20207
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September 13, 2002

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Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Petition of Chattanooga Gas Company
for Approval of Change in Purchase
Gas Adjustment
Docket No. 02-00383

Dear Mrs. Kyle:

Enclosed is an original and fourteen copies of the Attorney General's Opposition to Chattanooga Gas Company's Appeal of Order Denying its Experimental Tariff in the above-referenced matter. Copies are being furnished to counsel of record for interested parties.

Sincerely,

Vance L. Broemel

VANCE L. BROEMEL
Assistant Attorney General

cc: Counsel of Record

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Tennessee Regulatory Authority
Docket 004

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:

PETITION OF CHATTANOOGA GAS
COMPANY FOR APPROVAL OF CHANGE
IN PURCHASE GAS ADJUSTMENT

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DOCKET NO. 02-00383

ATTORNEY GENERAL'S OPPOSITION TO CHATTANOOGA
GAS COMPANY'S APPEAL OF ORDER DENYING ITS
EXPERIMENTAL TARIFF

In an Order dated August 30, 2002, Hearing Officer Richard Collier denied Chattanooga Gas Company's ('Chattanooga Gas') Petition for approval of an experimental tariff that would immediately raise the gas prices of all residential customers in the Chattanooga area.

The Attorney General opposed this experimental tariff and urges the Tennessee Regulatory Authority ("TRA") to uphold the Hearing Officer's Order denying the tariff.

The experimental tariff is presented by Chattanooga Gas as a means of protecting customers from volatility in gas prices. The experimental tariff contains a "fixed rate" for the price of gas per therm a customer would pay throughout the year, which would, of course, prevent gas price per therm volatility. The experimental tariff, however, accomplishes this goal of suppressing volatility by charging a significantly higher price than customers generally pay, a price that is not justified in the record.

In addition, the experimental tariff is presented on a no-choice basis: customers have to participate in the plan or go to some other energy source such as electricity. Numerous other fixed rate plans offered by other companies, however, give their customers the choice of whether

to participate in the plan or not. The experimental tariff, on the other hand, forces every customer to participate or leave the system.

The following two points, then, are the main reasons the Attorney General opposes the experimental tariff:

- (1) The price of gas under the tariff is too high and not justified in the record; and
- (2) Customers are given no choice to opt in or out of the fixed rate plan while numerous other similar tariffs by other companies offer such an option.

There are other problems with the tariff in addition to high prices and a lack of choice. In the interest of time, however, rather than stating each problem in detail, the Attorney General hereby adopts the conclusions of the Hearing Officer on these other issues.

1. THE PRICE OF THE EXPERIMENTAL TARIFF IS TOO HIGH AND NOT SUPPORTED BY THE RECORD

Under current practice, a Chattanooga Gas customer pays for the actual cost of gas bought by Chattanooga Gas throughout the year; that is, the cost of gas is "passed through" to the customer and can go up or down on a monthly basis.

Under the proposed experimental tariff, however, the customer would pay a price set by Chattanooga Gas on October 1st of each year; this price would not vary month-to-month, even if gas costs went up or down throughout the year.

The price, set as of October 1st of each year, is derived from a rather complicated formula that need not be analyzed here, except for the fact that the price includes a "risk premium" of approximately 16% over the estimated cost of the gas. Direct Testimony of Robert T. Buckner, witness for the Attorney General, at 7. That is, the price the consumer would pay under the

experimental tariff is the estimated cost of gas as of October 1st, plus a mark-up of 16% for any risk that the cost of gas to Chattanooga Gas will be higher than anticipated. It is this "risk premium" that is one of the main reasons the Attorney General opposes the proposed experimental tariff.

In his Order denying the experimental tariff, the Hearing Officer found that the "risk premium" in the proposed Fixed Rate Tariff ("FRT") has been calculated in an arbitrary manner based on the Company's current rate of return." Order at 27. That is, Chattanooga Gas has not provided any convincing reason why it should receive a "risk premium" of 16%.

In particular, Chattanooga failed to provide any satisfactory reason for basing the calculation of the risk premium on its own rate of return. Order at 27. In all seriousness, Chattanooga Gas may as well have said that its calculation was based on the winning percentage of the Atlanta Braves or the winning number of the Power Ball Lottery. Baseball records or lottery numbers have as much relevance to the alleged risks facing Chattanooga Gas as the rate of return, i.e., none. Obviously, Chattanooga Gas wanted a risk premium that was at least as high as the rate of return so it chose that number.

The fact that Chattanooga Gas has not provided adequate justification for the calculation of its risk premium is highlighted in its own Petition for Appeal. In its Petition at page 11, Chattanooga Gas states as follows:

"Precisely, because these potential risks are difficult to quantify, Petitioner used the TRA approved rate of return (approximately 9.08%), multiplied by the known and quantifiable costs, to establish the risk premium."

But "rate of return" is not "risk". If anything, rate of return is a virtual guarantee that a company is entitled to make a certain amount of money. So it is entirely improper and arbitrary

to use rate of return as a means of calculating the risk factor. Accordingly, the price of the experimental tariff is without sufficient support in the record.

II. THE EXPERIMENTAL TARIFF DOES NOT GIVE CUSTOMERS A CHOICE TO OPT IN OR OUT ALTHOUGH NUMEROUS OTHER SIMILAR TARIFFS ACROSS THE COUNTRY DO PROVIDE SUCH AN OPTION

Witness for the Attorney General's Office, Michael Chrysler, testified to six other "fixed rate" tariffs across the country which gave their customers the option to participate or not. Transcript at 136.

Chattanooga Gas, however, does not give its customers such an option. In the eyes of the Attorney General, this lack of option is sufficient reason to disapprove the plan.

The need for an option is demonstrated by the Company's own "focus group" research regarding the experimental tariff. These focus groups were panels of Chattanooga Gas customers who were told about the experimental tariff by a Company-paid moderator and then asked a series of questions. Leaving aside questions as to the legitimacy of the methodology of the "focus group" research, it revealed that no more than 1/3 of the participants were in favor of the experimental tariff. Order at 20 and 30-31. Thus, it is only fair that the 2/3's who opposed the tariff or were indifferent should have the right to opt out.

Chattanooga Gas claims that the cost of instituting a computer program necessary to give customers the choice of opting in or out is too expensive. Transcript at 30. Thus, Mr. Buie of Chattanooga Gas testified that changes to the computer system would cost some \$230,000. Id.

Chattanooga Gas, however, did not adequately address the issue of why other companies could afford to change their computers to allow their customers a choice. Thus, it is manifestly unfair to Tennessee consumers to deny them the choice consumers in other states have.

In summary, the lack of choice is fatal to the experimental tariff. Consumers today expect more choice, not less, especially when the cost of obtaining that choice is only a small part of the projected profits of a regulated company.

CONCLUSION

For the foregoing reasons, the TRA should uphold the Hearing Officer's Order and deny the experimental tariff.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of September, 2002, a copy of the foregoing document was served on the following parties:

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